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were totally destroyed by fire which occurred without negligence on the part of the railway company. Plaintiff brought this action against defendant as initial carrier of an interstate shipment, under a provision of the act of Congress known as the Carmack Amendment, Act June 29, 1906, c. 1591, § 7, par. 11, 34 Stat. 595 (U. S. Comp Stat. Supp. 1911, p. 1307). This provision makes the carrier taking goods for transportation from one State to another responsible for their loss or injury on connecting lines. *Held,* that it was incumbent on the terminal carrier to notify the shipper of the consignee's refusal to receive the goods, and having failed to do so it was liable for their destruction; that the goods were still in interstate commerce so as to be the subject of federal regulation; that the Carmack Amendment was intended to go as far as Congress had power to regulate the subject, and to make the initial carrier liable for any loss of the property until its interstate shipment was completed; and that therefore, defendant was liable in this suit. *Nashville, C. & St. L. Ry. Co.* v. *Dreyfuss-Weil Co.* (Ky. 1912) 150 S. W. 321.

Although courts disagree as to when a common carrier's liability as carrier ceases, it is well settled that after notice to the consignee and a reasonable time for him to remove the goods, the liability is that of a warehouseman only. *Norway Plains Co.* v .*Boston & M. R. Co.,* 1 Gray (Mass.) 263; *McMillan* v. *M. S. R. Co.,* 16 Mich. 79. But when the consignee refuses to receive the goods, some courts hold that a duty is thereby put upon the carrier to notify the shipper of that fact. *Am. Sugar Refining Co.* v. *McGehee,* 96 Ga. 27; *U. S. Express Co.* v. *Keefer,* 59 Ind. 263. Other courts hold that there is no such duty on the carrier. *Gregg* v. *I. C. Ry. Co.,* 147 Ill. 550; *Kremer* v. *Southern Express Co.,* 46 Tenn. 356. It is submitted that in taking the stricter view of the carrier's duty, and in holding that the statute is intended to apply as far as Congress has power to regulate the subject, the court has gone as far as is possible in making the initial carrier liable.

JUDGMENT — PARTIES CONCLUDED — PERSONS PARTICIPATING IN DEFENCE.— A taxpayer sued the city of Fond du Lac to enjoin the execution by it of a contract for street paving. The attorney of the contractor who was to lay the paving, appeared and participated in the defence in connection with the city's counsel. The attorney made no charges for his services against the city, but he was under a general retainer from the contractor, and the latter paid all his expenses. *Held,* a judgment rendered adjudicating the invalidity of the paving contract, was binding on the contractor, though the latter was not made a party to the suit. *McMillan* v. *Barber Asphalt Paving Co.* (Wis. 1912) 138 N. W. 94.

For a discussion of this case, see NOTE AND COMMENT, p. 238, ante.

MASTER AND SERVANT—COMPENSATION—TIPS.—The plaintiff was employed by the defendant in the latter's shoe-shining shop. He worked under a salary contract and wages agreed upon were paid him. During two years of his service for the defendant, however, he was given tips by customers whose work he had done, and he turned over these tips to the defendant each night.

This action was brought to recover back such tips. *Held,* in the absence of an agreement, gifts in the way of tips over and above the regular charge for the service performed, given to the employee by the employer's customers, belong to the employee. *Zappas* v. *Roumeliote* (Ia. 1912) 137 N. W. 935.

It is well settled that servants and agents are not allowed to take a profit arising out of the business they are hired to transact. *Boston Deep Sea Fishing & Ice Co.* v. *Ansell,* L. R. 39, Ch. Div. 339; *Jacques* v. *Edgell,* 40 Mo. 76; 26 CYC. 1020, 31 CYC. 1434. In discussing what is meant by profit in the above sense the court in *Aetna Ins. Co.* v. *Church,* 21 Oh. St. 492 says, "But it will be found in that class of cases that the profit arises from a claim that could be enforced either by the principal or the agent against the party from whom it was received." Gratuities which could not legally be demanded by either the master or servant have never been held to be profits, and in several cases the courts have decided that tips belong to the person who receives them. On facts almost identical with those in the principal case it was held that a servant could recover tips, in *Polites* v. *Barlin* (Ky. 1912) 149 S. W. 828. In *M'Rae* v. *M'Beath,* 3 Kerr 446 (N. Brun.) it was held that money given to the servant by the owner of a horse which was led behind the stage on one of its regular trips was a mere gratuity to the servant for his trouble in looking after the horse, and that the master had no right to it. The English Courts have probably gone furthest with regard to the ownership of tips by holding that tips received by a waiter on a restaurant car were part of his earnings and must be taken into consideration in computing the compensation payable to his dependent under the Workmen's Compensation Act 1906; *Penn* v. *Spiers and Pond,* 77 L. J. K. B. 542. In discussing the case the court says, "It is notorious that tips are given to waiters, and employers could not pretend to be ignorant of the custom. They must have known that the deceased would receive, and so far as they were concerned they must be taken to have agreed that he should receive, tips from customers in addition to his cash wages. In short it was an implied term of the contract of employment that these tips should be part of his earnings in his employment and by virtue of his employment." The American Courts do not go as far as this but only hold that tips belong to the servant unless otherwise specified in the contract of employment.

MUNICIPAL CORPORATIONS—VALIDITY OF BOND GIVEN TO MUNICIPALITY CONDITIONAL UPON NON-PERFORMANCE OF AN ACT PROHIBITED BY THE GENERAL LAW.—The general state law prohibited the sale of intoxicating liquors, and made a "near-beer" vendor punishable for "having on hand at his place of business intoxicating liquor." An ordinance of plaintiff required defendant, a near-beer vendor, to execute a bond conditioned "not to violate the state prohibition law." Defendant was fined under the State law for having intoxicating liquor in his possession, and now is held liable on the bond. *City of Albany* v. *Cassel et al.* (Ga. App. 1912) 76 S. E. 105.

This is apparently a novel case. If the act which was thus attempted to be restrained were not one prohibited by general law, it would hardly be disputed that this would be a proper regulation under the public power.